

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2019-\_\_\_\_\_

In re:	)	
	)	
Petition of Duke Energy Carolinas, LLC	)	<b>PETITION</b>
for Approval of Agreement with Anderson	)	
County	)	
_____	)	
	)	

Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby applies to the Public Service Commission of South Carolina (the “Commission”) pursuant to S.C. Code Ann. §§58-27-840, and other applicable rules and regulations of the Commission, for approval of the certain portions of an agreement between DEC and Anderson County, South Carolina. In support of this Petition, DEC provides the Commission the following facts and requests the following relief:

**Name and Address of the Petitioner**

The correct name and post office address of DEC is:

Duke Energy Carolinas, LLC  
Post Office Box 1321  
Charlotte, NC 28201

**Notice and Communications**

The names and addresses of the attorneys for DEC who are authorized to receive notices and communications with respect to this Petition are:

Heather Shirley Smith, Deputy General Counsel  
Duke Energy Carolinas, LLC  
40 West Broad Street, Suite 690  
Greenville, SC 29601  
Telephone: 864.370.5045  
[heather.smith@duke-energy.com](mailto:heather.smith@duke-energy.com)

and

Frank R. Ellerbe, III  
Samuel J. Wellborn  
ROBINSON GRAY STEPP & LAFFITTE, LLC  
Post Office Box 11449  
Columbia, South Carolina 29211  
Telephone: 803.227.1112  
[fellerbe@robinsongray.com](mailto:fellerbe@robinsongray.com)  
[swellborn@robinsongray.com](mailto:swellborn@robinsongray.com)

Copies of all pleadings, orders or correspondence in this proceeding should be served upon the attorneys listed above.

### **Description of the Petitioner**

DEC is engaged in the generation, transmission, distribution and sale of electric energy at retail in the western portion of South Carolina and the central and western portions of North Carolina. The Company also sells electricity at wholesale to municipal, cooperative and investor-owned electric utilities and its wholesale sales are subject to the jurisdiction of the Federal Energy Regulatory Commission. DEC is a corporation organized and existing under the laws of North Carolina, is authorized to transact business in the State of South Carolina and is a public utility under the laws of South Carolina. Accordingly, its operations in South Carolina are subject to the jurisdiction of the Public Service Commission of South Carolina pursuant to the provisions of Chapter 27 of Title 58 of the South Carolina Code of Laws.

### **Background**

DEC has developed a plan to construct an energy storage facility ("Facility") in Anderson County. When constructed and brought into operation the Facility will provide 5000 KW of storage capacity and will also serve as a microgrid for the Anderson County Civic Center when a power outage occurs. In non-emergency situations the battery storage facility will be an integral part of the DEC system and will provide significant benefits to it, including frequency regulation,

peak load shaving and the improvement of power quality and reliability. During an outage, the storage facility can be disconnected from the DEC system so that it can be operated as a “microgrid” for the Anderson County Civic Center. The Civic Center has been designated by the South Carolina Department of Health and Environmental Control as a Special Medical Needs Shelter. It is also a distribution point for the Strategic National Drug Stockpile, a Weather Emergency Shelter and an evacuation center for Anderson School District Five and the Red Cross.

### **The DEC Agreement with Anderson County**

As part of its plan to construct and operate the Facility, DEC has entered into a Ground Lease Agreement (“Agreement”) with Anderson County. A copy of the Agreement is attached as Exhibit 1 to this Petition. Pursuant to the Agreement, DEC will lease .75 acres of property owned by Anderson County for the placement of the Facility. Section 5 of the Agreement also provides that in lieu of rent DEC will use the Facility to provide back-up power to the Anderson County Civic Center in the event of an outage affecting service to the Center. The Agreement does not affect the rates that Anderson County will pay for electricity. Whether provided during normal operations or during emergencies, all electricity provided by DEC to Anderson County will be metered and billed at the applicable rates.

### **DEC Requests Approval of the Back-Up Power Portion of the Agreement**

In this Petition DEC requests that the Commission approve that Portion of Section 5 of the Agreement by which DEC agrees to provide back-up power to the Anderson County Civic Center in the event of an outage. That portion of Section 5 is a special service arrangement by which DEC will provide electricity to its customer Anderson County. The arrangement is applicable to the specific facts and circumstances described in this Petition. DEC submits that the back-up power portion of the Agreement is within the jurisdiction of this Commission and requests

approval of the arrangement as being in the public interest because it (1) allows DEC to establish a battery storage facility that will provide benefits to the DEC system during regular operation of the system and (2) will allow the provision of back-up power to the Anderson County Civic Center during outages.

As described above, DEC requests that the Commission approve the back-up power portion of Section 5 of the Agreement and grant such other relief as the Commission deems just and proper.

Dated this 4<sup>th</sup> day of October, 2019.

Heather Shirley Smith, Deputy General Counsel  
Duke Energy Corporation  
40 West Broad Street, Suite 690  
Greenville, South Carolina 29601  
Telephone: 864.370.5045  
[heather.smith@duke-energy.com](mailto:heather.smith@duke-energy.com)

and

s/Frank R. Ellerbe, III  
Frank R. Ellerbe, III  
Samuel J. Wellborn  
ROBINSON GRAY STEPP & LAFFITTE, LLC  
Post Office Box 11449  
Columbia, South Carolina 29211  
Telephone: 803.227.1112  
[fellerbe@robinsongray.com](mailto:fellerbe@robinsongray.com)  
[swellborn@robinsongray.com](mailto:swellborn@robinsongray.com)

Attorneys for Duke Energy Carolinas, LLC

**ORDINANCE NO. 2018-035****AN ORDINANCE AUTHORIZING THE LEASE OF A PORTION OF THE ANDERSON SPORTS AND ENTERTAINMENT CENTER CONSISTING OF APPROXIMATELY .75 ACRES OF TAX PARCEL NO. 122-00-01-001 TO DUKE ENERGY CAROLINAS, LLC FOR LOCATION OF AN ENERGY STORAGE SYSTEM AND RELATED IMPROVEMENTS; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS,** Duke Energy Carolinas, LLC has proposed to locate an Energy Storage System and related ancillary technologies, including, but not limited to, solar photovoltaic power aways, voltage regulations, and power quality regulation.

**WHEREAS,** the Energy Storage System would provide an alternative source of power to the Anderson Sports & Entertainment Center in the event of a power outage;

**WHEREAS,** Anderson County, South Carolina (the "County") acting by and through its County Council is authorized under Title 4 of the Code of Laws of South Carolina, as amended, to lease, sell or otherwise dispose of real and personal property;

**WHEREAS,** Anderson County, South Carolina owns the real property which contains the Anderson Sports & Entertainment Center, more specifically designated as Tax Map parcel 122-00-01-001, and the County desires to lease approximately .75 acres to Duke Energy Carolinas, LLC for location of an Energy Storage System.


**NOW THEREFORE, BE IT ORDAINED BY THE** Anderson County Council in meeting duly assembled that:

1. The Anderson County Council hereby approves the lease of approximately .75 acres of real property located at the Anderson Sports & Entertainment Center (a portion of Tax Map Parcel 122-00-01-001) to Duke Energy Carolinas, LLC for location of an Energy Storage System as negotiated on Ground Lease Agreement attached as Exhibit A.
2. The County Administrator is hereby authorized, empowered, and directed to execute, acknowledge, and deliver all documents in the name and on behalf of the County to carry out the transactions contemplated by this Ordinance, including, without limitation, the Ground Lease Agreement, Memorandum of Lease and such other documents necessary and appropriate to the lease of the real property.
3. All Ordinances, Orders, Resolutions, and actions of Anderson County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.
4. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by a Court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.

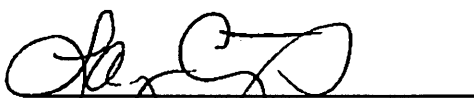
5. This Ordinance shall take effect and be in full force upon the third reading and enactment of by Anderson County Council.

**ORDAINED** in meeting duly assembled this 16th day of October, 2018.

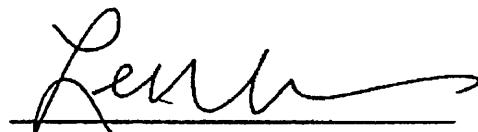
**ATTEST:**

  
\_\_\_\_\_  
Rusty Burns  
Anderson County Administrator

  
\_\_\_\_\_  
Tommy Dunn, Chairman  
Anderson County Council

  
\_\_\_\_\_  
Lacey A. Croegaert  
Clerk to Council

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leon C. Harmon  
Anderson County Attorney

First Reading: September 18, 2018  
Second Reading: October 2, 2018  
Third Reading: October 16, 2018  
Public Hearing: October 16, 2018

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the 15<sup>th</sup> day of November, 2018 (the "Effective Date"), by and between Anderson County, a body politic and corporate and a political subdivision of the State of South Carolina (the "Landlord") and DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company (the "Tenant").

Landlord and Tenant covenant and agree as follows:

1. **Premises and Intended Use.** In consideration of the rents, terms, covenants, and agreements set forth in this Lease to be paid, kept, and performed, Landlord leases to Tenant and Tenant leases from Landlord approximately \_\_\_ acres of land (being Tax Parcel No. 1220001001), located in the City of Anderson, Anderson County, South Carolina, more particularly described and/or depicted on Exhibit A attached hereto and incorporated herein by reference (the "Land"), and all improvements, fixtures, personal property and trade fixtures now or in the future located thereon (but excluding any property required to be removed by Landlord pursuant to Section 7(b) of this Lease), together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the Land, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the "Premises"), to be occupied and used upon the terms and conditions herein set forth. Tenant's intended use of the Premises is for the development, construction, installation, operation and maintenance of an energy storage system and related improvements for the storage of electric power and related ancillary technologies, including but not limited to, solar photovoltaic power arrays, voltage regulation, and power quality regulation (the "Intended Use"), and including without limitation, (i) electrical and communication lines, transformers, power inverters, equipment, cables, switches and electrical substation(s); (ii) laydown areas, control buildings, and maintenance facilities; and (iii) roads, fences and gates, and other structures and facilities required for ingress and egress for pedestrians, motor vehicles and equipment and for security (collectively the "Energy Storage System").

2. **Term of Lease, Commencement Date, and Renewal Terms.**

(a) **Term of Lease and Commencement Date.** The term of this Lease (including any extensions or renewals, the "Term") shall commence on the Commencement Date and shall end at 11:59 P.M. local time on the date that is fifteen (15) years after the Commencement Date (the "Expiration Date"), unless extended or sooner terminated as herein provided. If the Expiration Date is other than the last day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire. The "Commencement Date" shall be the Commercial Operation Date. The "Commercial Operation Date" shall be the date that all of the following have occurred: (i) the Energy Storage System has been installed, constructed, tested, commissioned, and is fully capable of being operated for its Intended Use; (ii) the Tenant has received all permits and approvals from governmental authorities having jurisdiction and the applicable electrical transmission provider for the Energy Storage System; and (iii) the Energy Storage System begins delivering electricity to the electrical grid. Once the Commencement Date is ascertained, the parties agree to execute a memorandum or other writing confirming the Commencement Date.

(b) **Renewal Terms.** Tenant shall have the right to extend the initial Term granted herein for up to three (3) additional terms of five (5) years each (each a "Renewal Term" and collectively, the "Renewal Terms") by providing Landlord with written notice of Tenant's desire to extend the Term for the

applicable Renewal Term prior to the Expiration Date (or prior to the expiration of the preceding Renewal Term, as applicable); provided, however, that Landlord, in its sole discretion, consents to such extension.

**3. Due Diligence Period; Construction Period; and Landlord's Rights Before Construction Commencement Date.**

(a) **Due Diligence Period.** Commencing on the Effective Date and continuing for a period of two (2) years after the Effective Date (the "**Initial Due Diligence Period**"), Tenant shall have the right to enter the Premises to perform its due diligence, inspection, investigation and pre-construction activities to determine if the Premises is suitable for leasing by Tenant, the Intended Use, and obtaining permits and approvals for the Intended Use. Tenant may extend the Initial Due Diligence Period for one (1) additional year commencing after the expiration date of the Initial Due Diligence Period (the "**Extended Due Diligence Period**"), by delivering written notice to Landlord prior to the expiration date of the Initial Due Diligence Period. (The Initial Due Diligence Period and Extended Due Diligence Period are collectively referred to herein as the "**Due Diligence Period**").

(b) **Construction Period.** The "**Construction Period**" shall commence upon the Construction Commencement Date (as hereinafter defined) and expire upon the Commercial Operation Date (which is the same date as the Commencement Date of the Term of this Lease). The "**Construction Commencement Date**" shall be the earlier of (i) the date Tenant issues written notice to Landlord advising Landlord of Tenant's intent to begin construction activities at the Premises, or (ii) the date Tenant commences the construction or installation of the Energy Storage System at the Premises; provided however, the Construction Commencement Date shall not be deemed to have occurred by virtue of any testing conducted by Tenant on the Land, minimal site clearing to support such testing, or by virtue of Tenant installing access routes or roads on the Land, nor shall it be any later than six (6) months following the conclusion of the Due Diligence period. Once the Construction Commencement Date is ascertained, the parties agree to execute a memorandum or other writing confirming the Construction Commencement Date.

(c) **Landlord's Rights Prior to Construction Commencement Date.** During the period between the Effective Date and the Construction Commencement Date, Landlord shall continue to have full use and control of the Premises, subject to Tenant's access and inspection rights set forth in Section 3(a) and Section 4 of this Lease. On and after the Construction Commencement Date, Landlord (and any other party claiming, by, through or under Landlord) shall not have full use and control rights of the Premises.

**4. Lease Contingencies and Tenant's Due Diligence.**

(a) **Lease Contingencies.** Tenant's obligation to perform hereunder shall be subject to the satisfaction of the following contingencies (collectively the "**Contingencies**"): (i) Tenant obtaining all necessary permits and approvals from federal, state and local governmental authorities required by Tenant for its Intended Use and to construct and operate its Energy Storage System at the Premises with interconnection to the grid for the sale and delivery of electrical power; (ii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental, geological, geotechnical, and; (iii) Tenant obtaining all necessary easements for its Intended Use. Landlord, at no cost to Landlord, agrees to sign any applications or other documents (that require signature by the fee owner of the Premises), and to take all such other actions, as are reasonably required to allow Tenant to, at Tenant's expense, obtain any re-zonings, variances, permits or other approvals required by Tenant for the Intended Use. If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the expiration date of the Due Diligence Period, Tenant may terminate this Lease by giving written notice to Landlord prior to the expiration date of the Due Diligence Period. In addition, the Tenant's right to terminate this Lease pursuant to this Section 4(a) shall expire on the Construction Commencement Date and is further subject to the conditions specified in Section 9 of this Lease.



(b) **Due Diligence, Inspections, Title and Survey.** After the Effective Date, Tenant and its employees, agents, contractors, and authorized representations shall be entitled to enter the Premises and conduct, at Tenant's expense, inspections, investigations, studies, surveys, borings, sampling, and testing of the Premises as Tenant deems necessary or desirable to determine if the Premises is suitable for Tenant's Intended Use (the "**Due Diligence Work**"). Within sixty (60) days after the Commencement Date, Tenant shall obtain a survey of the Premises (the "**Survey**"). The Survey's legal description shall be deemed to be the legal description of the Land for all purposes under this Lease. After the Commencement Date, Tenant may, at Tenant's expense, conduct the necessary survey(s) and submit the required filings to the local governmental authority having jurisdiction to subdivide the parcel(s) of Land comprising the Premises so that the Premises are contained within one or more tax parcels separate from other adjacent property owned by the Landlord.

5. **Rent.** No rent shall be paid by Tenant to Landlord. In lieu of paying rent, Tenant shall install, maintain and operate the Energy Storage System to provide backup power to Landlord's Anderson Civic Center in the event of a grid outage.

6. **Utilities, Maintenance and Repairs.** Tenant shall pay for all utilities used at the Premises by Tenant. Tenant, at Tenant's cost, shall be responsible for the repair and maintenance of the Energy Storage System and Tenant's improvements on the Premises.

7. **Alterations.**

(a) Tenant may, at its expense and upon approval of Landlord which shall not be unreasonably withheld, make any alterations, additions, improvements and changes to the Premises as it may deem necessary or desirable in the operation of its business or Energy Storage System, including without limitation any fencing, security devices and or signage desired by Tenant. Any alteration, addition, improvement or change conducted by Tenant shall be done in compliance with applicable laws and requirements of governmental agencies having jurisdiction. Landlord, at no cost to Landlord, agrees to sign any permit applications and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises. The Energy Storage System and any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, equipment, and other personal property installed or placed in the Premises by or for Tenant, shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant, and shall be removable by it at the expiration or earlier termination of this Lease. In the event that Tenant removes any trees, crops or other vegetation from the Premises during the Term, Tenant may sell and/or dispose of the same, and any revenues derived by Tenant from the sale of the same shall belong to Tenant.

(b) Within thirty (30) days after the Tenant notifies Landlord that the Construction Commencement Date has occurred, Landlord shall, at Landlord's sole cost and expense, remove and dispose of all of the following from the Premises: NONE

8. **Use and Occupancy.** Tenant shall be entitled to use the Premises for the Intended Use. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to the Tenant on the Construction Commencement Date.

9. **Lease Termination and Surrender of Land.**

(a) **Termination Rights.** Tenant shall have the right to terminate this Lease as provided in Paragraph 4 (the "**Termination Date**") by providing Landlord with written notice of such termination on or before the date that is thirty (30) days prior to the Termination Date. Upon a termination of this Lease by

Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder.

(b) **Surrender of Land.** Upon the expiration or earlier termination of this Lease, Tenant shall (i) return the Land to Landlord in substantially the same condition the same were in as of the Construction Commencement Date, to the extent practicable and reasonable wear and tear excepted; and if applicable, (ii) decommission and remove Tenant's Energy Storage System and all improvements and equipment constructed or installed by Tenant on the Land. Notwithstanding the foregoing, in no event shall Tenant have any obligation to replace any crops or other vegetation damaged or removed by Tenant during the Term.

10. **Insurance.** Tenant may, after the Energy Storage System and its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards. Tenant shall keep in force, at its sole cost and expense, comprehensive commercial general liability insurance, with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, insuring such party, and the other party hereto as additional insured, against liability arising out of the use, occupancy or ownership of the Premises. Landlord maintains General Tort Liability coverage through the State Fiscal Accountability Authority, Insurance Reserve Fund and will, upon request, provides a certificate of insurance. Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance. Notwithstanding the foregoing, Tenant may self-insure (either by use of deductibles or self-insured retention) the coverage required of Tenant hereunder and Tenant may satisfy its insurance obligations hereunder through a "blanket" policy or policies covering other properties or liabilities of Tenant.

11. **Taxes.** Tenant shall be solely responsible for any ad valorem property taxes that are assessed against either the Premises or Tenant's personal property for periods falling within the Term. Landlord and Tenant shall apportion taxes appropriately between the parties for any partial tax years falling within the Term. Tenant shall also be responsible for any deferred property taxes ("**Deferred Taxes**") due on the Premises as a result of Tenant's use of the Premises for the Intended Use in accordance with applicable South Carolina laws. However, in the event that Tenant's use of the Premises for the Intended Use triggers the obligation to pay any Deferred Taxes, or any other taxes, assessments, penalties, fees or interest, on any other property owned by Landlord (other than the Premises), Landlord shall be solely responsible for paying the same. In the event that the Premises is a part of a larger tax parcel owned by Landlord, and Deferred Taxes become payable on the entire tax parcel as a result of Tenant's use of the Premises for the Intended Use, the Deferred Taxes shall be equitably apportioned as to Landlord and Tenant in a pro-rata manner such that Tenant is responsible only for such costs as they relate to the Premises and Landlord is responsible for the remainder. During the Term, Tenant, at its cost, shall have the right, at any time, to seek a reduction in the assessed valuation of the Premises or to contest any taxes that are assessed against the Premises (or any portion thereof) or are to be paid by Tenant. If Tenant seeks a reduction or contests any taxes, the failure on Tenant's part to pay the taxes shall not constitute a default as long as Tenant complies with the provisions of this Section 11.

12. **Fire or Other Casualty.** In the event that the Premises, Energy Storage System, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole reasonable judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises, the Energy Storage System, or other improvements thereon, as the case

may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall be payable to Tenant.

**13. Condemnation.**

(a) If the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) If a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. If there is any Partial Taking, the Landlord and the Tenant shall both be entitled to participate in the condemnation proceeding to establish the condemnation award to the taking of each parties' interest in the Premises.

(c) If Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding the foregoing, however, in the event Tenant has exercised its right to terminate this Lease under this Section 13, then Tenant shall first receive all condemnation proceeds until Tenant has received an amount equal to the appraised value of the improvements made to the Land by Tenant prior to the taking. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

**14. Default.** If either party fails to comply with any term, covenant or condition of this Lease for a period of thirty (30) days after the defaulting party's receipt of written notice from the other party of such failure (provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, the defaulting party shall not be in default hereunder if it commences to cure within such thirty (30) day period and prosecutes the cure to completion in good faith and with due diligence), then the defaulting party shall be deemed in default hereunder and the other party may, at its option, may pursue any and all remedies available to such party at law or in equity. If there is a default by a party hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages.

**15. Binding Effect; Assignment and Subletting.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, with Landlord's prior consent which shall not be unreasonably withheld, provided that any such assignee shall agree in writing to be bound by all of the terms and conditions of this Lease. Landlord shall promptly notify

Tenant in writing of the identity and address of any purchaser of Landlord's fee interest in the Premises and Landlord shall cause such purchaser to notify Tenant in writing of the address.

16. **Indemnification.** Except to the extent caused by Landlord, Tenant agrees to indemnify and hold Landlord harmless from any and all damages or claims which Landlord may be compelled to pay on account of injuries to person or damages to property on the Premises where the aforesaid injuries or damages are caused by Tenant (or Tenant's employees, agents, or contractors) or Tenant's breach of this Lease.

17. **Quiet Enjoyment.** Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term hereof, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

18. **Waiver.** The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

19. **Notices.** All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: Anderson County  
Attn: County Administrator  
PO Box 8002  
Anderson, SC 29622

To Tenant: Duke Energy Carolinas, LLC  
Lease Administration  
550 S. Tryon Street, DEC 22A  
Charlotte, NC 28202

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

20. **Memorandum of Lease.** Landlord and Tenant agree that this entire Lease shall not be recorded; provided however, promptly after the full execution of this Lease, Landlord and Tenant shall execute and record (at Tenant's expense) a memorandum of this Lease in the Office of the Register of Deeds in the County in which the Premises is located and which memorandum shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The lease memorandum shall specify the Commencement Date, the Expiration Date, the Renewal Terms granted herein, and such other provisions of this Lease as the parties mutually agree to incorporate therein.

21. **Governing Law/Dispute Resolution.** This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina without regard to Conflict of laws principles. Any dispute regarding this Lease shall be brought as a non-jury matter in the Court of Common Pleas, Anderson County, South Carolina and the Parties hereby WAIVE THEIR RIGHT TO A JURY TRIAL.

22. **Invalidity of Particular Provisions.** If any term or provision of this Lease shall to any extent be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

23. **Subordination/Non-Disturbance Agreement.**

(a) Tenant's obligation to subordinate its interests or attorn to any mortgagees or beneficiaries of mortgages or deeds of trust, or any other holders of liens on the Premises or any portion thereof (each hereinafter a "Mortgagee") that may heretofore or hereafter be placed against the Premises by Landlord is conditioned upon the Mortgagee's written agreement not to disturb Tenant's possession, quiet enjoyment of the Premises, and rights under this Lease so long as Tenant is not in default under the terms of this Lease (beyond any applicable notice and cure periods). Landlord shall use commercially reasonable efforts to provide to Tenant, on or before the expiration date of the Due Diligence Period and Construction Commencement Date, a subordination, non-disturbance, and attornment agreement from any and all current Mortgagees that is reasonably acceptable to Tenant. With respect to any future Mortgagee of a mortgage or deed of trust, Landlord shall use commercially reasonable efforts to obtain from such future Mortgagee a subordination, non-disturbance, and attornment agreement that is reasonably acceptable to Tenant.

(b) In the event any proceedings are brought for foreclosure of any mortgage or deed of trust on the Premises, Tenant will attorn to the purchaser at a foreclosure sale on acquiring Landlord's interest in the Premises and the Lease, and any assignee thereof, and recognize such purchaser or assignee as Landlord under this Lease provided such purchaser or assignee agrees in writing not to disturb Tenant's possession or rights under this Lease or in the Premises, and to acknowledge all of Tenant's rights hereunder, so long as Tenant is not in default under the terms of this Lease (beyond any applicable notice and cure periods). Tenant agrees to give any such Mortgagee of whom Tenant has been informed in writing, written notice of any default or failure to perform by Landlord under this Lease. Such Mortgagee shall have the same amount of time afforded to Landlord hereunder to cure any Landlord default; and Tenant shall accept such cure if timely and effectively made by such Mortgagee.

24. **Warranties and Representations.**

(a) Tenant hereby agrees with, and warrants and represents to Landlord as follows: (i) Tenant is a duly formed and validly existing entity, incorporated or organized under the laws of the State in which it was incorporated or organized; (ii) Tenant has the full legal right, power and authority to execute this Lease and all documents now or hereafter to be executed by it pursuant to this Lease; (iii) this Lease has been duly authorized by all requisite entity action on the part of the Tenant, and is the valid and legally binding obligation of Tenant, enforceable in accordance with its terms; (iv) this Lease will not contravene any provision of Tenant's organizational documents, any judgment, order, decree, writ or injunction issued against Tenant or any provision of any laws applicable to Tenant; and (v) the consummation of the transaction contemplated hereby will not result in a breach or constitute a default or event of default by Tenant under any agreement to which Tenant or any of its assets are subject or bound and will not result in a violation of any laws applicable to Tenant.

(b) Landlord hereby agrees with, and warrants and represents to Tenant as follows: (i) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof; (ii) to the best of Landlord's knowledge, the Premises are free from environmental contamination of any sort, and the Premises complies with any and all applicable laws, rules, and ordinances; (iii) Landlord has not received any notice of condemnation,

zoning change or legal noncompliance relating to the Premises; (iv) Landlord will not institute or consent to any rezoning of the Premises during the Term, unless specifically requested by Tenant; (v) Landlord shall not further encumber the title to the Premises after the Effective Date and during the Term; (vi) Landlord acknowledges that access to sunlight is essential to the value of the rights granted to Tenant under this Lease, and accordingly, Landlord shall not cause or permit any property owned or controlled by Landlord in the vicinity of the Premises, or any activities, uses or improvements thereon, to impair Tenant's use of the Premises or the Energy Storage System thereon (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon or permit the growth of any foliage that may obstruct the sunlight that otherwise would reach the Premises, or that may cast shade or shadows upon the Premises or any portion thereof); (vii) the Premises is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants; (viii) Landlord has not and, to the best of Landlord's knowledge, Landlord's tenants or predecessors in title have not used, manufactured, stored or released petroleum products or hazardous substances except in accordance with all laws, rules, and regulations related thereto on, in or under the Premises; (ix) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for; (x) there are no delinquent or outstanding assessments, liens, taxes, or other impositions levied or assessed against the Premises; (xi) there is no pending or threatened lawsuit, claim, or legal proceeding against Landlord or the Premises that could affect the Tenant's rights under this Lease or the Landlord's ability to perform Landlord's obligations hereunder; (xii) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Premises (or any portion thereof), whether written or oral, recorded or unrecorded; (xiii) Landlord is not in the hands of a receiver nor is an application for such a receiver pending; (xiv) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and (xv) within ten (10) days after the Effective Date, Landlord shall provide copies of the following documents with respect to the Premises in Landlord's possession or reasonably available to Landlord: (a) any notices of any statute or code violation; (b) to the extent assignable, copies of all documents, contracts, reports, communications, or other materials reasonably requested by Tenant, that relate to the design, development, construction, condition, ownership or operation of the Premises; (c) surveys of the Land, engineering studies, soil suitability and compaction studies, environmental permits, local zoning permits, variances, waivers, or similar documents; (d) environmental reports and audits (including, but not limited to, all "Phase I" environmental site assessments and other environmental assessment and remediation reports, if any, pertaining to the Premises); (e) liens, mortgages, deeds of trust, leases, easements, restrictions, covenants, and agreements applicable to the Premises; and (f) title commitments, title policies, title opinions, and other title or survey information relating to the Premises. Landlord shall have a continuing obligation to provide to Tenant the documents, if any, referenced in subparts (a) through (f) above, which may come into Landlord's possession, or become available to Landlord, during the Due Diligence Period.

(c) Tenant shall retain title to and be the legal and beneficial owner of the Energy Storage System at all times. Landlord shall provide timely notice of Tenant's title and sole ownership of the Energy Storage System to all persons that have, or may come to have, an interest in or lien upon the real property comprising the Premises. Tenant shall be the exclusive owner of the electricity stored by the Energy Storage System and the Environmental Attributes (as hereinafter defined) and Environmental Incentives (as hereinafter defined) thereof. "Environmental Attributes" means the characteristics of electric power generation at the Energy Storage System that have intrinsic value, separate and apart from the generated energy, arising from the perceived environmental benefits of the Energy Storage System or energy generated at the Energy Storage System, including but not limited to all environmental and other attributes that differentiate the Energy Storage System or energy generated at the Energy Storage System from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the Energy Storage System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence

of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Energy Storage System or the compliance of the Energy Storage System or energy generated at the Energy Storage System with the law, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or any successor laws, rules or standards or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Environmental Protection Agency or successor administration or any state or federal entity having jurisdiction over a program involving transferability of rights arising from Environmental Attributes. Without limiting the foregoing, "Environmental Attributes" includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any demand-side management or energy efficiency programs offered by a utility company, a third-party provider, or other incentive programs offered by the state and the right to claim federal income tax credits, if applicable. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the Energy Storage System or the energy generated at the Energy Storage System or otherwise from the development or installation of the Energy Storage System or the production, sale, purchase, consumption or use of the energy generated at the Energy Storage System.

25. **Brokerage Commission.** Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

26. **Easements.** Landlord agrees to reasonably cooperate with Tenant in granting easements and rights of way on adjacent property owned by Landlord necessary to serve the Premises for the Tenant's Intended Use. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Tenant is hereby authorized to grant such easements across, under and over the Premises as are necessary for rights of way, ingress and egress, and for the installation, construction, operation, maintenance, repair and replacement of utility lines and related facilities serving the Premises, including without limitation any such easements required to connect the Premises to a receiver of electric power generated at the Premises.

27. **Access.** Tenant, and Tenant's employees, agents, contractors, guests, subtenants and designees shall have access to the Premises at all times after the Effective Date and during the Term. On and after the Construction Commencement Date, neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises.

28. **Confidentiality.** Landlord acknowledges that Landlord may become privy to confidential information of Tenant, in addition to information regarding the terms of this Lease. Landlord therefore agrees to take all steps to ensure that any information with regard to Tenant, Tenant's Intended Use of the Premises (and improvements thereon) and/or this Lease, shall remain confidential and shall not be disclosed or revealed to outside sources by Landlord or by its employees, officers, agents, counsel, accountants or representatives, except as otherwise required by law, including without limitation the South Carolina Freedom of Information Act, or court order. The terms of this Section 28 shall survive the expiration or any sooner termination of this Lease.

29. **Estoppel.** Within fifteen (15) business days after written request therefor by Tenant, Landlord shall deliver a certificate to Tenant, Tenant's lender (if applicable) and/or any proposed assignee of Tenant, in a commercially reasonable form, setting forth the terms of this Lease, the absence of default hereunder, and such other reasonable terms as may be requested by Tenant or by such lender or assignee. If the Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

30. **Leasehold Mortgages.** Tenant and every successor and assign of Tenant is hereby given the right by Landlord, without Landlord's consent, to mortgage its interest in this Lease and assign its interest in this Lease as collateral security for such mortgage. If Tenant and/or Tenant's successors and assigns shall mortgage all or part of its interest in this Lease and if Tenant or the holder of such mortgage shall send to Landlord a true copy thereof together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Landlord agrees that so long as the leasehold mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply:

(a) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the holder of the leasehold mortgage. The leasehold mortgagee shall have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such leasehold mortgagee's acts if they had been performed by Tenant.

(b) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the rent and other charges, and upon the terms, provisions, covenants and agreement contained in this Lease, provided:

(i) the mortgagee or its nominee shall pay to Landlord, at the time of execution and delivery of the new lease, any and all sums which would then be due pursuant to this Lease but for such termination; and

(ii) the mortgagee or its nominee shall perform and observe all covenants in this Lease to be performed by Tenant and shall further remedy any other conditions which Tenant was obligated to perform under the terms of this Lease.

(c) Landlord shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to the leasehold mortgagee and to Landlord, between Landlord, Tenant and the leasehold mortgagee confirming the provisions of this Section 30.

The term "mortgage," as used in this Section 30, shall include mortgages, deeds of trust and/or whatever security instruments are used in the State in which the Premises are located from time to time, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

31. **Bankruptcy.** In the event (i) the Premises or any rights therein shall be levied on by execution or other process of law by a creditor of either party, (ii) if either party shall be adjudged bankrupt or insolvent, (iii) if any party has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof, (iv) if any receiver shall be appointed for the business and property of either party, or (v) if any assignment shall be made of either party's property for the benefit of



creditors, thereby diminishing any right or privilege granted by this Lease to the other party, then the other party may terminate this Lease forthwith and otherwise exercise any other remedy it may have at law or equity or under this Lease.

32. **Nature and Extent of Agreement/Amendments.** This Lease contains the complete agreement of the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease. No amendment or modification of this Lease shall be binding unless in writing and duly executed by both parties.

33. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease by authority duly given, as of the day and year first above written.

LANDLORD:

By: 


Name: Ward Russell Burns

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

I, Elizabeth R. Wilkes, a Notary Public for Anderson County, South Carolina, certify that Ward Russell Burns, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this 19<sup>th</sup> day of October, 2018.

  
Notary Public  
Printed/Typed Name: Elizabeth R. Wilkes

My Commission Expires: 9/8/27

[AFFIX NOTARIAL STAMP OR SEAL]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease by authority duly given, as of the day and year first above written.

TENANT:

DUKE ENERGY CAROLINAS, LLC

By: Ottis W Allen

Name: Ottis W Allen

Title: Area Land Services Rep

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

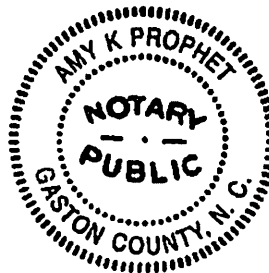
I, Amy K. Prophet, a Notary Public for Gaston County, North Carolina, certify that Ottis W. Allen, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he/she is Area Land Services Rep of DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company, and that he/she, as manager, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the limited liability company in the capacity indicated.

WITNESS my hand and official stamp or seal this 15<sup>th</sup> day of Nov., 2018.

Amy K. Prophet  
Notary Public  
Printed/Typed Name: Amy K. Prophet

My Commission Expires: April 10, 2021


[AFFIX NOTARIAL STAMP OR SEAL]



• ALL LOCATIONS ARE APPROXIMATE



APPROXIMATE ADDRESS	3027 MARTIN LUTHER KING JR BLVD ANDERSON SC 29625
SITE COORDINATES (LAT, LONG)	34.538749, -82.679978
INTERCONNECTION CAPACITY	TBD
INVERTER	PARKER 890GT-x-xxx
INVERTER CAPACITY	2500 KVA
INVERTER COUNT	3
AC CAPACITY	7,500 KVA
ENERGY CAPACITY	5,000 KWH

REV	DATE	JOB NO.	PROJECT TYPE	DES	DFTR	CHKD	ENGR	APPD	DESCRIPTION	 <b>DUKE ENERGY</b> <small>FILENAME: SITEPLAN ANDERSON CIVIC CENTER.DWG</small>	SCALE: NTS	DES:	TITLE: CONCEPTUAL SITE PLAN			
1	09/04/18		BESS				SFB		UPDATE BESS CAPACITY AND LAYOUT		DWG TYPE: PLAN	DFTR:	FOR ANDERSON COUNTY CIVIC CENTER BESS			
0	06/25/18		BESS				SFB		FOR PRELIMINARY REVIEW		JOB NO:	CHG:	DWG ASD	DRAWING NO	SHEET NO.	REVISED
											DATE: 06/25/18	ENGR: SFB	APPD:	ANIS B 11/11/18		1